

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Revision No.2142 of 2004

Date of Decision: May 10, 2007

Dr.Sumitra Devi

...Petitioner

VERSUS

Manjit Singh Ahlawat and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Kuldeep Tiwari, Advocate,
for the petitioner.

RANJIT SINGH, J.

Requirement of obtaining sanction, as envisaged under the provisions of Section 197 Cr.P.C. for prosecuting a Government servant, would be an issue arising for determination in the present case. Daughter of the then powerful political figure is pitted against the senior police officers in this case. Dr.Sumitra Devi, daughter of the then Chief Minister, is aggrieved against the order passed by Addl.Sessions Judge, Hisar quashing the summoning order and proceeding against Manjit Singh Ahlawat and Rajesh Duggal, who were

then working as Superintendent of Police and Station House Officer, Police Station, Civil Lines, Hisar on the ground that sanction had not been obtained for their prosecution, as required under Section 197 Cr.P.C.

Petitioner filed a complaint against the respondents under various sections of the Indian Penal Code pleading that they had entered into her house and had used criminal force, besides committing theft and as such they be prosecuted for those offences. The issue arose between the parties when the daughter of the petitioner was not allowed to celebrate her birthday party at P.W.D.Rest House. The complaint of the petitioner is that on 20.5.1998 her daughter had gone to P.W.D.Rest House, Hisar for celebrating her birthday party at about 7.30 P.M. Soon thereafter, the petitioner received a telephonic call from her daughter that she was being stopped from holding the birthday party and that her articles were thrown and was asked to vacate the Rest House. Petitioner rushed to the Rest House and met Renu Phulia and Lalban present there. She states to have requested them to allow the child to celebrate the birthday party, but was refused permission. Disclosing that she was the daughter of the then Chief Minister and as such deserved better treatment, the petitioner complains that still she was not allowed to continue with the party and was insulted in public. The petitioner and her daughter, as such, returned without celebrating the party. The petitioner claims to have thereafter gone to the market for doing some shopping and on reaching her house at about 9/9.30 P.M., she found it having been encircled by police. Respondents were amongst the number of police personnel present there and they

had already entered the house. On enquiry by the petitioner from respondent No.1 as to why the police had entered into her house and when asked to show search warrant, respondent No.1 got enraged and gave 2/3 blows with danda on the right knee of the petitioner. Respondent No.2 statedly abused the petitioner and gave her fist blows and slaps. Complaint further is that both the respondents threatened to kill the petitioner. It appears that the petitioner was taken into custody and handed over to lady police. The petitioner was escorted to police station by respondent No.2. She was got medically examined from Civil Hospital, Hisar and produced in the court on the following morning, when she was remanded to judicial custody. She was also admitted in the hospital because of her condition and was released on bail on 22.5.1998.

On return to her house, upon being released on bail, the petitioner found her almirah broken and a sum of Rs.7,50,000/- coupled with gold jewellery, weighing ten tolas missing therefrom. On enquiry made by the petitioner from one Manik Dange, who was present in the house, she learnt that respondents had broken the latches of the almirah and had removed the cash and jewellery. Photographs of the broken almirah were taken by calling a Photographer and complaint was made to the D.I.G.Hisar in this regard. The petitioner and her husband met the D.I.G. 2-3 times thereafter, but he did not take any action. The petitioner rather noticed that he was making effort to save the guilty police officials, which compelled her to file the complaint before Illaqa Magistrate on 13.6.1998.

In support of the complaint, the petitioner produced five

witnesses and thereafter the trial Magistrate summoned the respondents for offences under Sections 323, 452, 506, 342, 379 and 500 IPC vide his order dated 3.8.1998. The respondents, herein, filed an application before the Magistrate for dismissing the complaint, but the same was declined on 31.10.2000. This order was impugned in revision by the respondents herein. The Revisional Court, after making detailed reference to the fact and plea raised by the respondents that they could not be prosecuted without obtaining sanction under Section 197 Cr.P.C., came to hold their hand and has set-aside the order summoning the respondents by accepting the revision. It is against this order that the petitioner is now in present revision on various counts, seeking setting-aside of the order passed by Addl. Sessions Judge.

This petition, though filed in the year 2004, was adjourned from time to time on the request made on behalf of the petitioner and as such is pending consideration for issuance of notice till date.

The primary issue, which is addressed and which would require consideration, relates to the requirement of obtaining sanction for prosecution of the respondents having regard to the facts of the case. The counsel for the petitioner would urge that there is no requirement to obtain sanction for prosecuting respondents for the offences alleged as they had committed offences, which are not connected with or relatable to performance of their duties as public servants. The counsel says that respondents had no right to use criminal force or to enter into the house of the petitioner or to commit theft, as alleged, even if they had gone in connection with the discharge of their duties as public servants. The requirement of

obtaining sanction for prosecuting such individual acts committed by the respondents would not arise in this case.

Though the Revisional Court has discussed the facts in detail while allowing the revision, yet I need not do so as the issue basically is to see if sanction for prosecution of respondents would be needed in this case or not. The requirement of obtaining sanction for prosecution of a public servant, as envisaged under the provisions of Section 197 Cr.P.C., is by now well settled.

The Hon'ble Supreme Court in **K.Kalimuthu Vs. State by D.S.P. 2005(2) RCR (Criminal) 463** has held that Section 197 Cr.P.C. should be liberally construed in favour of a public servant as otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. Talking about the purpose of protection under Section 197 Cr.P.C., the Hon'ble Supreme Court further held that this is to protect responsible public servants against the institution of possible vexatious criminal proceedings for offences alleged to have been committed by them, while they are acting or purporting to act as an public servants. Reference is made to observations made in Matajog Dubey Vs. H.C.Bhari, AIR 1956 SC 44, which are:-

“The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim,

that he did it in the course of the performance of his duty.

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed.”

Reference can also be made to State of H.P. Vs. M.P.Gupta, 2004(1) RCR (Crl.) 197 and State of Orissa through Kumar Raghvendra Singh & Ors. Vs. Ganesh Chandra Jew, 2004(2) RCR (Crl.) 663 (SC). Shri S.K.Zutshi and Anr. v. Shri Bimal Debnath and Anr. 2004(3) RCR (Crl.) 813 (SC) can be seen in this regard where it is observed:-

“....But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary.”

In Abdul Wahab Ansari Vs. State of Bihar and another, (2000) 8 Supreme Court Cases 500, it is held that previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the

Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. In State of Orissa Through Kumar Raghvendra Singh and Ors. v. Ganesh Chandra Jew, 2004(2) RCR (Criminal) 663, the Hon'ble Supreme Court took the view that cognizance of any offence, by any court, is barred by Section 197 of the code unless sanction is obtained from the appropriate authority in a complaint against public servant and if the offence alleged to have been committed was in discharge of official duty. The Court further observed that bar on the exercise of powers by the court to take cognizance of an offence is absolute and complete and very cognizance is barred and complaint cannot be taken notice of. In a recent decision of Parkash Singh Badal and Anr. v. State of Punjab and Ors., 2007(1) RCR (Criminal) page 1, the Hon'ble Supreme Court held as under:-

“The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when

the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of Section 197 does not

immediately get attracted on institution of the complaint case.”

Thus, it can be said that when the act done by public servant is reasonably connected with the discharge of his duty and is not merely a cloak for doing the objectionable act, the protection should be available. Even if, the public servant, while doing public duty acts in excess of his duty, but his act is reasonably connected with the performance of duty, then the excess in itself will not be sufficient ground to deprive the public servant from the protection. In Parkash Singh Badal's case (supra), it is clearly held that it is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. It was further held that the act can be performed in discharge of official duty as well as in dereliction thereof.

As per Parkash Singh Badal's case (supra), Section 197 Cr.P.C. has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty, that is under the colour of office. As noticed in this judgment, official duty implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. Its operation, as such, is limited to those duties, which are discharged in course of duty. It is also noticed that if any act or omission is found to have been committed by a public servant in discharge of his duty, then it is to be given a liberal and wide construction so far its official nature is concerned. As per Hon'ble Supreme Court, once it is established

that the act or omission was done by the public servant while discharging his duty, then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. If that is not done, then the entire purpose of affording protection to a public servant without sanction may stand frustrated.

As noticed by the Hon'ble Supreme Court in Parkash Singh Badal's case (supra), once it is established that the act or omission was done by public servant while discharging his duty, which is the situation in the present case, then it is to be construed to be an official so as to advance the objective of this Section in favour of the public servant. Once it has been found that the act was concededly committed by a public servant in discharge of his duty, then it is to be given liberal and wide construction so far as its official nature is concerned.

It has not been disputed either in the petition or at the time of arguments that the respondents had gone to the house of the petitioner as police officers in performance of their duties as public servants. The petitioner is alleged to have assaulted, abused and slapped Renu Phullia and Lalban, public servants, while she had gone to P.W.D. Rest House on the call given by her daughter. A case FIR No.197 dated 20.5.1998 was accordingly registered against the petitioner. She was accordingly got arrested from her house and was medically examined. Respondent No.1 states that he has not gone to the house of the petitioner, whereas respondent No.2 was heading the police party and had arrested the petitioner from her house. It is, thus, claimed that respondent No.2 had acted in

discharge of his official duties. Even if one was to concede that respondent No.1 had also gone to the house of the petitioner, it cannot be said that he or respondent No.2 had gone there in any individual capacity. It cannot be denied that they were the police officers posted in the District and had gone to perform their duties as public servants to effect arrest of the petitioner, who was alleged to be involved in FIR registered against her. As noticed in the various judgments, referred to above, need for sanction arises, if there is a reasonable connection with the discharge of duties. It is not the duty, which requires examination so much as the act, because the official act can be performed while in discharge of the official duty as well as in dereliction of it. In ***P.Arulswami Vs. State of Madras***, AIR 1967 Supreme Court 776, it is held by the Court that protection to public servant is available when the alleged act is reasonably connected with discharge of his official duties and is not merely a cloak for doing the objectionable act. It is further held that if the act complained of is directly concerned with the official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is also viewed that an act constituting an offence directly and reasonably connected with official duty will require sanction for prosecution. The denial of respondent No.1 in regard to his presence at the house of the petitioner notwithstanding, it cannot be a matter of much dispute that respondent No.2 or for that matter respondent No.1 had not gone to the house of the petitioner in their individual capacity, but had gone to perform their duty as public servants. Their acts were very well connected with their official duty and as such sanction would be

needed for their prosecution. It sounds beyond comprehension that senior police officers, like respondent No.1 or for that matter respondent No.2, who was working as S.H.O. would have the audacity to maltreat the petitioner, who was none other than daughter of the then Chief Minister or would dare to break open the almirah and do away with the money and jewellery, as alleged. As observed by the Hon'ble Supreme Court, sanction under Section 197 Cr.P.C. is basically meant to protect responsible public servants against the institution of possible vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. This section is an expression of policy of Legislature for ensuring adequate protection to public servants and to see that they are not prosecuted for anything having been done by them in discharge of their official duties. It is in this background, the Hon'ble Supreme Court went to the extent of noticing that even if, the public servant, while doing public duty acts in excess of his duty, but same is reasonably connected with the act and performance of duty, then the excess will not be sufficient ground to deprive the public servant from the protection. As rightly noticed by the Hon'ble Supreme Court, the question is not as to the nature of offence but more on the fact whether it was committed by the public servant acting or purporting to act as such in discharge of official duty. Reference can be made to the case of **Rakesh Kumar Mishra Vs. State of Bihar and others, 2006(1) Apex Criminal Judgements 175**, where Hon'ble Supreme Court held that no court can entertain complaint or take notice of a complaint except with previous sanction of the competent

authority when the offence committed by public servant is in discharge of his official duty. In this very judgment, the Hon'ble Supreme Court went on to notice that a police officer using force in discharge of his official duty, which constituted an offence, the sanction is needed for prosecution, but such sanction would not be required if the same officer uses force in the course of service, but not in discharge of his official duty. It cannot be denied that the offence allegedly committed by the respondents was committed by them in the course of their service as part of their official duty. In the case of **Rakesh Kumar Mishra (supra)**, the search was made of the house without warrant, but still it was held that this sanction would be needed as the act/omission was done by officer concerned in connection with the official duty performed by him. I am inclined to hold that allegations of theft and use of criminal force sounds improbable considering the status of the petitioner as well as that of the respondents and these allegations apparently seem to have been made for ensuring prosecution of respondents, which may be termed as vexatious. These considerations would arise in the present case making the requirement of sanction to be essential, so that the respondents concededly being public servants are not put to any un-called vexatious prosecution.

It is held that sanction under Section 197 Cr.P.C. would be needed for prosecuting respondents in the present case. Concededly no sanction for prosecuting respondents in this case has been obtained. I find no infirmity in the impugned order and as such,

would dismiss the present revision petition.

May 10, 2007
ramesh

(RANJIT SINGH)
JUDGE